



DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900-AR81

Names for National Cemeteries and Features

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to remove its regulation concerning the naming of cemeteries and features. VA is proposing this action because, after reviewing internal policy and processes, VA determined this regulation is obsolete and unnecessary. When VA promulgated this regulation, VA's cemetery naming activities were supported by statute and served a purely administrative function that did not change existing law or policy and did not affect individual rights or obligations. The activities therefore did not require a regulation to effectuate. However, now that the regulation is in effect, removing it would change existing policy, which requires a rulemaking. The Secretary of Veterans Affairs (the Secretary) has authority for naming Department property and has delegated in regulation the authority for naming features within national cemeteries to the Under Secretary for Memorial Affairs, who is the head of VA's National Cemetery Administration. Therefore, this action is under the authority of the National Cemetery Administration.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments must be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be

available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and may not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Michelle Myers, Management and Program Analyst, Legislative and Regulatory Service (42E), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420. Telephone: (202) 717-2979 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Generally, 5 U.S.C. chapter 5 establishes procedures by which Federal agencies can formulate regulations, and 5 U.S.C. 553 addresses which agency rulemakings require "notice and comment" and publication in the Federal Register. Also, 38 U.S.C. 501(a) gives the Secretary "authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department." Under this broad authority, the Secretary is also authorized to repeal rules or regulations that are neither necessary nor appropriate to carry out the laws administered by the Department. See generally 5 U.S.C. 551(5) (defining "rule making" to include "repealing a rule.").

The Secretary's authority for naming cemeteries is codified in 38 U.S.C. 531, and the Secretary's authority for naming features within national cemeteries is delegated to the Under Secretary for Memorial Affairs in 38 CFR 2.6(f)(4).

In January 1978, VA proposed regulations (43 FR 1628 (January 11, 1978)) related to the operation of the National Cemetery System. The proposed regulations were to provide rules for the Advisory Committee on Cemeteries and Memorials, the naming of national cemeteries and activities and features therein, acceptance of gifts and donations, and other topics. The proposed rule for naming cemetery activities unnecessarily restated both the statutory authority of the Secretary for naming national cemeteries and the authority delegated to the Under Secretary for Memorial Affairs in § 2.6(f)(4) to name features in national cemeteries. It also included a paragraph establishing the basis for names and stated that names of cemetery activities may be based on physical and area characteristics, the nearest important city (town), or a historical characteristic related to the area. The rule also stated that newly constructed interior thoroughfares for vehicular traffic will be known as "drives" and will be named after cities, counties, or States or after historically notable persons, places, or events. The rule became final on June 14, 1978.

The VA's National Cemetery Administration (NCA) honors Veterans and their eligible family members with final resting places in national shrines and with lasting tributes that commemorate their service to and sacrifice for our nation. As part of that mission, NCA owns and operates 155 national cemeteries covering more than 22,000 acres of land from Hawaii to Maine, and from Alaska to Puerto Rico.

In 1998, with sec. 1001 of the Veterans Programs Enhancement Act of 1998, Pub. L. 105-368, 112 Stat. 3315, Congress amended Title 38 of the U.S. Code to add sec. 531, which established the statutory requirement relating to naming of VA property. Effective on November 12, 1998, Department facilities, structures, or real property or

major portions thereof may only be named for the geographic area in which the facility, structure or property is located. In a recent review of policy for naming national cemeteries and features, VA determined the addition of sec. 531 makes the 1978 rule no longer necessary or appropriate. For these reasons, VA proposes to remove 38 CFR 38.602.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The naming of national cemeteries and features is an internal operations function that only affects VA national cemeteries. As well this proposed rule revokes the existing regulation and will have no

economic impact on small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 (one) year. This proposed rule would have no such effect on State, local, and Tribal governments, or on the private sector.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on March 16, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulations Development Coordinator,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

For the reasons stated in the preamble, and under the authority of 38 U.S.C. 501, the Department of Veterans Affairs proposes to amend 38 CFR part 38 as follows:

**PART 38 - NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS
AFFAIRS**

1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

§ 38.602 [Removed]

2. Remove § 38.602.

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